



University of Hawaii at Manoa

Environmental Center
Crawford 317 • 2550 Campus Road
Honolulu, Hawaii 96822
Telephone (808) 948-7361

RL:0897

SB 2482 SD 1
RELATING TO PLANT AND NON-DOMESTIC ANIMAL QUARANTINE

Statement for House Committees on
Agriculture
Health
Transportation
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By
Jacquelin Miller, Environmental Center
William Grannis, Environmental Center
Mark Merlin, General Science

The purpose of SB 2482 SD 1 is to strengthen the law relating to the introduction of a prohibited animal or plant into the state by increasing the allowable fines. The bill exempts the advisory committee on plants and animals in HRS Section 150A-10 from the provisions of HRS 92 except for rulemaking. Lastly, the bill adds specific language to improve the enforcement capabilities of the Department of Agriculture with regard to violations and graduated penalties for the importation of prohibited animals microorganisms or plants.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

As indicated in the committee report (SCR 2380) the intent of this bill is to provide a much stronger incentive, through increased fines, to eliminate or reduce the intentional importation of prohibited species. With this intent we strongly concur. However, there are a number of points in the bill with which we have serious questions and reservations.

The various amendments in Sections 1 through 3 (pages 1-12) should significantly strengthen the Department of Agriculture's surveillance and enforcement capabilities at ports of entry, (airports and seaports) to the state.

Section 4 (page 14) modifies the format and content of the previous lists of plants and animals that may be imported by establishing three lists:

- 1 - Conditionally approved animals and microorganism which can be imported with a permit;
- 2 - Restricted animals and microorganisms that require a permit for both import and possession; and,
- 3 - A list of animals and microorganisms that are prohibited.

All animals and microorganisms not on one of these lists [is] are prohibited until the boards review and determination of their status.

In our review of this section, the rationale for separating lists 1 and 2 was not obvious. If an animal or microorganism can be imported with a permit what difference is there between "conditionally approved" or "restricted" except in the language of the conditions set in the permit? Perhaps a definition of what criteria are used to designate "conditionally approved" and "restricted" would be appropriate. Furthermore, the addition of "and possession" on page 14, line 10, is unclear. Surely if an animal or microorganism requires a permit for importation, whether it be "conditional" or "restrictive" then penalties for possession of either category of animal or microorganism should apply equally. As presently drafted, one could possess a conditionally approved animal that has no importation permit without fear of reprisal.

Section 4 (6) page 14, states that the board "shall" maintain a list of restricted plants but only provides that they "may" maintain a list of prohibited plants. Subsequently, in paragraph (b) page 15, lines 4-6 it is stated that:

"no person shall possess, propagate, sell, transfer, or harbor any plant, animal, or microorganism included on the list or lists of prohibited plants, animals and microorganisms maintained by the board under this section except as allowed by the board upon determination...etc.

We have several problems with this section. First, since maintaining the list of prohibited plants is discretionary in paragraph (6) page 14, on the part of the board, the prohibitions cited in paragraph (b) page 15, with respect to prohibited plants are moot. Second, language on page 15, line 8, implies that the board must allow the entry of species that meet the various criteria set forth in paragraphs 1-3, page 15, without discretion as to the consequences. This does not appear reasonable. Just because a prohibited animal, plant, or microorganism was once introduced legally is no reason to permit its continued importation if it has been shown to be deleterious to the environment. Similarly, a prohibited species, unlawfully introduced that has become established, is no justification for importing more.

Section 6 would exempt the advisory committee on plants and animals and any ad hoc or permanent subcommittees from the requirements of HRS 92. We see no purpose to this exemption. The deliberations and findings of the advisory committee or its subcommittees should be open to the public.

Section 7 establishes new penalties for violations of the provisions of this chapter. We suggest that paragraph (2) lines 8-11, page 19, be omitted and be replaced by paragraph (3) with the following corrections:

(2) [(3)] For an offense committed within five years of [two] a prior conviction[s] under this chapter, by a fine of not less than \$2000 or by imprisonment of not more than one year, or both.

We further suggest that paragraph (b) line 17, page 19, be amended to read:

Any person, carrier, or importer who violates this chapter more than two [three] times within a five-year period...etc.

As indicated in the beginning of our statement, we concur with the general intent of this bill to improve the enforcement ability of the Department of Agriculture with regard to the control of the importation of plants, animals, and microorganisms. Unfortunately, there seems to be a number of points in the bill that need amendment or clarification if the intent is to be realized.